7-25-2016

# State v. Arenas Appellant's Brief Dckt. 43751

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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| **STATE OF IDAHO,** | ) | |
| | ) | **NO. 43751** |
| **Plaintiff-Respondent,** | ) | |
| | ) | **BLAINE COUNTY NO. CR 2014-1813** |
| **v.** | ) | |
| | ) | |
| **OSVALDO GUADALUPE ARENAS,** | ) | **APPELLANT'S BRIEF** |
| | ) | |
| | ) | |
| **Defendant-Appellant.** | ) | |
| _____ | ) | |

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# BRIEF OF APPELLANT

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**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

_____

**HONORABLE ROBERT J. ELGEE**
**District Judge**

_____


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## STATEMENT OF THE CASE

### Nature of the Case

During a traffic stop, a police officer discovered an outstanding warrant for Osvaldo Guadalupe Arenas's arrest. The police searched him during the arrest and later searched his vehicle. Mr. Arenas was charged with two drug offenses. He moved to suppress the evidence found on him and in his vehicle, as well as his statements to the police during the stop. The district court granted his motion to suppress the evidence in his vehicle, but denied suppression of the evidence found on Mr. Arenas and his statements. Mr. Arenas entered a conditional guilty plea to possession of a controlled substance, reserving his right to appeal the district court's order on his motion to suppress. He argues that the district court erred by denying his motion to suppress his statements made during the search incident to arrest.

### Statement of Facts and Course of Proceedings

On the evening of July 31, 2014, Hailey Police Officer Ornelas stopped a vehicle for touching or crossing[1] the solid white line separating the slow vehicle turnout lane

[1] The district court found that the video of the stop showed the vehicle touch the white line, but not cross it. (R., p.141.) In contrast, the district court noted that Officer Ornelas told Mr. Arenas that he "crossed" the white line and made a similar statement in his probable cause affidavit. (R., p.141.) In light of these discrepancies, the district court stated:

> The Court concludes that for purposes of this Motion to Suppress it is irrelevant whether Mr. Arenas touched or crossed the line, but the visual evidence suggests there was merely a touching of the line. Any view the officer had of the vehicle would have been impeded by the conditions, just like the video evidence.

(R., p.141.)

from the other southbound lane of Highway 75, in violation of I.C. § 49-637 (failing to drive within a single lane). (R., pp.140–41.) Officer Ornelas made contact with the driver, Mr. Arenas. (R., pp.140, 141–42.) Officer Ornelas then returned to his patrol car and ran Mr. Arenas's name through dispatch. (R., p.142.) Officer Jones arrived at the scene around this time. (R., p.142 & n.3.) About five to six minutes into the traffic stop, dispatch informed Officer Ornelas of an outstanding warrant for Mr. Arenas's arrest. (R., p.142.) Officer Ornelas returned to the vehicle and arrested Mr. Arenas. (R., p.142.)

During Mr. Arenas's exit from the vehicle and arrest, Officer Ornelas asked him a few times if he had anything on him. (R., p.142, Def.'s Ex. B,[2] 7:22–8:20.) Mr. Arenas responded, "No." (R., p.142, Def.'s Ex. B, 7:22–8:20.) Officer Ornelas handcuffed Mr. Arenas and began to pat him down. (R., p.142; Def.'s Ex. A,[3] 8:59–11:04; Def.'s Ex. B, 7:37–8:20.) During the pat down, Officer Ornelas felt "a familiar object" in Mr. Arenas pocket and said, "I thought you had nothing on you dude." (R., p.142; Def.'s Ex. B, 8:20–8:23; Tr., p.29, Ls.15–17, p.42, Ls.16–23.) Mr. Arenas responded, "a piece . . . a meth pipe." (R., p.142; Def.'s Ex. B, 8:22–8:25.) Officer Ornelas took the pipe out of Mr. Arenas's pocket. (R., p.142; Def.'s Ex. A, 11:04–11:28.) Prior to placing Mr. Arenas in the patrol car, Officer Jones told Mr. Arenas that, if he brings something into the jail, it is another felony. (R., p.172, Def.'s Ex. B, 10:39–10:43.) Officer Ornelas did not provide Mr. Arenas with *Miranda*[4] warnings during his arrest, pat-down, and transfer to the patrol car. (R., p.142; Tr., p.28, Ls.15–17.)

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[2] Citations to Defendant's Exhibit B, the audio recording of the traffic stop, refer to the time elapsed in the audio recording.
[3] Citations to Defendant's Exhibit A, the dash-cam video of the traffic stop, refer to the time elapsed in the video recording.
[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

Officer Ornelas then searched Mr. Arenas's vehicle. (R., pp.142–43.) He found additional drug paraphernalia with traces of methamphetamine. (R., p.142.) Other items of contraband found in the vehicle belonged to the passenger. (R., pp.142–43.)

Sometime after Mr. Arenas was placed in the patrol car, but prior to his transport to the jail, Officer Jones provided Mr. Arenas with *Miranda* warnings. (R., p.143 & n.5; Tr., p.62, L.22–p.63, L.20.) Officer Jones also told Mr. Arenas again that he would face additional charges if he brought drugs into the jail. (R., p.143; Tr., p.63, L.24–p.64, L.7.) Shortly thereafter, Mr. Arenas admitted to having drugs in his waistband. (R., p.143; Tr., p.64, L.25–p.65, L.3.) The officers searched Mr. Arenas and found black plastic baggies containing methamphetamine. (R., p.143; Tr., p.34, L.21–p.25, L.4, p.47, Ls.3–22.)

The State filed a Criminal Complaint alleging Mr. Arenas committed the crimes of possession of a controlled substance, in violation of I.C. § 37-2732(c)(1), possession of drug paraphernalia, in violation of I.C. § 37-2734A, and driving without a valid license, in violation of I.C. § 49-301. (R., pp.9–10.) The magistrate held a preliminary hearing and bound Mr. Arenas over to district court. (R., pp.46–49.) The State filed an Information charging Mr. Arenas with possession of a controlled substance and possession of drug paraphernalia only. (R., pp.55–56.)

Mr. Arenas filed a Motion to Suppress Evidence. (R., pp.70–71; *see also* R., pp.76–77 (Amended Motion to Suppress Evidence).) The district court held a hearing on the motion and allowed supplemental briefing. (R., pp.79–80; *see generally* Tr., p.15, L.13–p.72, L.18.) Mr. Arenas argued that his initial detention was illegal, the search of his person and vehicle was not sufficiently attenuated from the illegal

detention, no other exception to the warrant requirement allowed the search of the vehicle, and his statements were inadmissible under *Miranda*. (R., pp.83–94.) The State responded in opposition, and Mr. Arenas replied. (R., pp.90–103, 105–10.) The district court heard further argument on the motion to suppress and took the matter under advisement. (R., p.135.)

The district court issued a Decision on Motion to Suppress. (R., pp.139–58.) The district court concluded that any illegal detention was attenuated from the search incident to Mr. Arenas's arrest and therefore the pipe found during the search incident to arrest would not be suppressed. (R., pp.143–52, 157–58.) The district court also concluded that Mr. Arenas's statement "a piece . . . a meth pipe" would not be suppressed. (R., pp.152–53, 158.) The district court suppressed the evidence found in the vehicle, however. (R., pp.155–57, 158.) Finally, the district court determined that Mr. Arenas's statement about the black plastic baggies, and the baggies themselves, would not be suppressed because, by that time, Officer Jones had provided Mr. Arenas with the *Miranda* warnings. (R., pp.153–54, 158.)

Pursuant to a plea agreement with the State, Mr. Arenas pled guilty to possession of a controlled substance. (R., p.168, 176–77.) He reserved the right to appeal the district court's partial denial of his motion to suppress. (R., pp.168, 169–70.) The district court sentenced Mr. Arenas to five years, with three years fixed, suspended the sentence, and placed him on probation. (R., pp.174, 178–79.) Mr. Arenas filed a

timely Notice of Appeal from the district court's Judgment of Conviction.[5] (R., pp.175–81, 188–90.)

[5] Mr. Arenas moved to suspend the briefing schedule on appeal pending the United States Supreme Court decision in *Utah v. Strieff*, Docket No. 14-1373. On June 20, 2016, the United States Supreme Court issued a decision: *Utah v. Strieff*, 579 U.S. ___, 2016 WL 3369419 (2016).

## ISSUE

Did the district court err when it denied in part Mr. Arenas's motion to suppress?

## ARGUMENT

### The District Court Erred When It Denied In Part Mr. Arenas's Motion To Suppress

### A. Introduction

Mr. Arenas challenges the district court's decision denying his motion to suppress his statement "a piece . . . a meth pipe" made during Officer Ornelas's search incident to arrest. Mr. Arenas made this statement during a custodial interrogation without any *Miranda* warnings, in violation of his Fifth Amendment right against self-incrimination. Therefore, the district court should have suppressed his statement.

### B. Standard Of Review

The Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Wulff*, 157 Idaho 416, 418 (2014). "Ordinarily, the determination of whether police are required to provide *Miranda* warnings presents a mixed question of law and fact." *State v. Silva*, 134 Idaho 848, 854 (Ct. App. 2000). The Court accepts the district court's findings of fact "unless they are clearly erroneous." *Wulff*, 157 Idaho at 418. The Court exercises free review over the "application of constitutional principles in light of those facts." *Id.*

### C. The District Court Erred When It Denied Mr. Arenas's Motion To Suppress His Statement Because He Made The Statement During A Custodial Interrogation Without The Requisite *Miranda* Warnings

"*Miranda v. Arizona* requires that a person be informed of his or her Fifth Amendment privilege against self-incrimination prior to custodial interrogation; otherwise, incriminating statements are inadmissible." *State v. Hansen*, 138 Idaho 791, 795 (2003). "*Miranda* warnings are required where a suspect is 'in custody'" and subject

to an "interrogation." *State v. James*, 148 Idaho 574, 576 (2010); *Hansen*, 138 Idaho at 795. The prosecution cannot use statements stemming from the custodial interrogation of a defendant "unless the questioning was preceded by what later became known as *Miranda* warnings." *State v. Munoz*, 149 Idaho 121, 128 (2010). "[T]he person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444. If the defendant provides a knowing, voluntary, and intelligent waiver of his *Miranda* rights, the defendant's statements made during a custodial interrogation may be admitted at trial. *State v. Ellington*, 151 Idaho 53, 60 n.7 (2011); *State v. Doe*, 137 Idaho 519, 523 (2002).

In this case, the district court should have suppressed Mr. Arenas's "meth pipe" statement because it was not preceded by *Miranda* warnings. In denying the motion to suppress, the district court reasoned:

> It is a fact that Mr. Arenas was not given *Miranda* warnings prior to the statement by the officer "I thought you had nothing on you, dude." However, the officer made that statement after he had discovered the arrest warrant, after he had Arenas step out of the car, after he had placed Arenas in handcuffs, and after he felt the object in Arenas's pocket. Officer Ornelas also testified that when conducting that pat-down "I felt a familiar object." At that point, with or without any oral response by Arenas, discovery of the pipe was a foregone conclusion. Arenas's statement did not lead to the discovery of the meth pipe. In addition, the Court does not find Officer Ornelas's statement any more likely to elicit an incriminating response than if the officer had said "I know what that is." The officer did not need, nor was he intending, necessarily, to obtain, an incriminating response. All he had to do was reach in Arenas's pocket, and he knew it. The pipe was actually discovered during the course of the pat-down search with or without any statements by Arenas or questioning by Officer Ornelas. The pipe would have been taken from Arenas within seconds of Officer Ornelas's statement ("I thought you had nothing on you, dude") whether Arenas made any comment or not. Because the search was valid the meth pipe will not be suppressed, nor will Arenas's statement about what it was.

(R., p.153.) The district court's reasoning is incorrect because it conflates the analysis on the legality of the search incident to arrest with the legality of the custodial interrogation. Whether the physical meth pipe was admissible is different from whether the statement about the meth pipe was admissible. Under the case law established by *Miranda* and its progeny, Mr. Arenas's statement was inadmissible because he was subject to a "custodial interrogation" by Officer Ornelas.

First, Mr. Arenas was "in custody" for *Miranda* purposes. "A person is in custody, for *Miranda* purposes, from the moment of formal arrest or as soon as the person's 'freedom of action is curtailed to a degree associated with formal arrest.'" *State v. Silver*, 155 Idaho 29, 31 (Ct. App. 2013) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)). Here, there is no dispute that Mr. Arenas was placed under formal arrest pursuant to an outstanding warrant. (R., p.142.) Therefore, Mr. Arenas was in custody, and *Miranda* warnings were necessary. *James*, 148 Idaho at 576–77.

Second, Mr. Arenas was subject to an "interrogation" when Officer Ornelas arrested and searched him. "A person is interrogated whenever subjected to express questioning or its functional equivalent . . . ." *Hansen*, 138 Idaho at 795. "The functional equivalent of interrogation includes 'any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.'" *State v. Salato*, 137 Idaho 260, 267 (Ct. App. 2001) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980)). "The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police." *Innis*, 446 U.S. at 301. Here, the district court examined Officer Ornelas's subjective intent, determining that Officer Ornelas did not

need or intend to obtain the incriminating "meth pipe" statement because he already found the actual pipe. (R., p.153.) But Officer Ornelas's subjective intent is minimally relevant to the determination of an "interrogation."[6] The "test for determining whether a given interaction rose to the level of the functional equivalent to an interrogation" is an "objective" one. *State v. Person*, 140 Idaho 934, 940 (Ct. App. 2004). As an objective test, Officer Ornelas "should know" that his statement "I thought you had nothing on you dude" was reasonably likely to elicit an incriminating response from Mr. Arenas.

Officer Ornelas's statement was reasonably likely to elicit an incriminating response because it was directed at Mr. Arenas and in reaction to Mr. Arenas's earlier claims that he had nothing on him. Contrary to the district court's determination, Officer Ornelas's statement was not similar to "I know what that is" or some other remark that simply identified the pipe. (*See* R., p.153.) Rather, Officer Ornelas's statement was aimed at Mr. Arenas and his knowledge of the pipe in his pocket. Officer Ornelas was expressing to Mr. Arenas that he lied to him about the items on his person. Officer Ornelas should have known that his accusation was reasonably likely to elicit a response by Mr. Arenas admitting his knowledge of the pipe. *See State v. Williams*, 134 Idaho 590, 592 (Ct. App. 2000) (possession of drug paraphernalia is a specific intent

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[6] This is not to say that the intent of the police is irrelevant, for it may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response. In particular, where a police practice is designed to elicit an incriminating response from the accused, it is unlikely that the practice will not also be one which the police should have known was reasonably likely to have that effect.

*Innis*, 446 U.S. at 316. There is no indication here that Officer Ornelas's statement was a police practice.

crime). Therefore, Officer Ornelas's statement was the functional equivalent of an interrogation.

Officer Ornelas should have provided Mr. Arenas with *Miranda* warnings prior to his custodial interrogation. *See Munoz*, 149 Idaho at 128. Without the requisite *Miranda* warnings, Mr. Arenas's statement was inadmissible under the Fifth Amendment. *Hansen*, 138 Idaho at 795. Thus, the district court erred by denying Mr. Arenas's motion to suppress his statement.

## CONCLUSION

Mr. Arenas respectfully requests that this Court reverse in part the district court's order denying in part and granting in part his motion to suppress, vacate the district court's judgment of conviction, and remand this case for further proceedings.

DATED this 25th day of July, 2016.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

## CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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